PRIVY COUNCIL REPORTS

STATION HOTELS BERHAD v. MALAYAN RAILWAY ADMINISTRATION

[P.C. (Lord Diplock, Viscount Dilhorne, Lord Edmund-Davies, Lord Scarman & Lord Lane) October 4 & November 27, 1979]

[Privy Council Appeal No. 34 of 1977]

Landlord and Tenant — Whether premises are rent controlled premises — Whether property controlled and managed by Railway Administration belonged to the Government — Property of Federal Government — Application of written laws to the Railway Administration — Railway Ordinance, 1948, ss. 4(1A) and 15(1) — Control of Rent Act, 1966, s. 4(2)(b) — Federal Constitution, art. 85(3) and 9th Schedule.

Practice and Procedure — Proceeding in lieu of demurrer under Order 25 — Judge acting suo moto — No injustice caused — R.S.C. 1957, O. 25.

Railways — Property controlled and managed by Railway Administration.

Constitutional Law — Railways — Land reserved for Federal purposes — Federal Constitution, art. 85(3) and 9th Schedule.

This was an appeal from the decision of the Federal Court ([1977] 1 M.L.J. 112), which dismissed the appeal of the appellant from a decision of Chang Min Tat J., as he then was, in the High Court. The learned judge had granted the respondent's application for summary judgment and had ordered the appellants to give up possession of the Station Hotel to the respondents. The issues raised on appeal before the Board were —

(a) whether, as the judge and the Federal Court had decided, the premises were exempted from the provisions of the Control of Rent Act, 1966, section 4(2)(b), and if so

(b) whether the judge was correct in dealing with the respondent's application as a proceeding "in lieu of demurrer" under Order 25 of the Rules of the Supreme Court, 1957.

Held: (1) if the premises were the property of the Railway Administration, then by virtue of section 4(1A) of the Railway Ordinance, 1948, they were exempted from the protection of the Control of Rent Act, 1966, as if they had been the property of the Government of the Federation;

(2) although the premises were under the control and management of the Railway Administration, they remained the property of the Federal Government and as such were outside the Control of Rent Act, 1966;

(3) assuming the learned judge should have invited an application from the respondents before acting as he did under Order 25, the effect of his decision was precisely the same as if he had acceded to the application under Order 14 and had entered judgment for the plaintiffs. The fact that he may possibly have adopted an erroneous method did not alter the fact that the result was correct in law, just and expeditious.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Gerald Davies (*Dr. Stephen Goh* with him) for the appellants.

Donald Pattee Q.C. (*K. Thayalan* with him) for the respondents.

Cur. Adv. Vult.

Lord Lane (delivering the judgment of the Board): This is an appeal from a majority decision of the Federal Court of Malaysia given on November 13, 1976 dismissing the appellants' appeal from a decision of Chang Min Tat J. in the High Court at Kuala Lumpur on May 3, 1976. By that decision the learned judge had in effect granted the respondents' application for summary judgment and had ordered the appellants to give up possession of the Station Hotel Kuala Lumpur (referred to hereafter as "the premises") to the respondents. He also made certain consequential orders which it is unnecessary to describe.

Although there were a number of matters canvassed before the learned judge, by the time the case reached this Board only two issues remained alive: —

(1) whether, as the judge and the Federal Court had decided, the premises were exempted from the provisions of the Control of Rent Act, 1966, section 4(2)(b), and if so

(2) whether the judge was correct in dealing with the respondents' application as a proceeding "in lieu of demurrer" under Order 25 of the Rules of the Supreme Court, 1957.

The premises are situated on land held under Railway Reserve. In 1935 that land was duly proclaimed by the Acting Secretary to Resident, State of Selangor, to be a reserve for the public purpose of a railway and goods yard to be maintained by the Manager of the Federated Malay States Railways.

There is no dispute that since 1935 by a series of agreements between the appellants and respondents, the details of which are immaterial, the appellants have been tenants of the premises. By March 31, 1975 at the latest such contractual tenancy had come to an end. The appellants nevertheless declined to give up possession (indeed they are still in occupation), and the respondents therefore in April 1975 started these proceedings. In September of that year they filed a summons-in-chambers under Order 14 rule 1 of the Rules of the Supreme Court with the results which have already been described.

Are the premises exempted from the Control of Rent Act?

It is common ground that the appellants are entitled to the protection of the Act by virtue of section 4(1) thereof unless it can be shown in the words of section 4(2)(b) that the tenancy was of "premises which are the property of the Government of the Federation or of the Government of any State".

Counsel for the appellants invited their Lordships to decide this matter on a strict interpretation of the pleadings. Paragraph 1 of the statement of claim reads as follows:

"1. The plaintiff is a corporate body established under the Railway Ordinance, 1948, and is the registered owner of the premises ... held under Railway Reserve Lot No. 13...."

That allegation was admitted by paragraph 1 of the defence and counterclaim. Therefore, goes the argument, whatever may be the truth of the matter, the parties have chosen to fight the case on the basis that the Malayan Railway Administration is the registered owner of the premises; that body is plainly neither the Government of the Federation nor the Government of any State; therefore the premises are not exempted from the Act and the appellants/defendants are entitled to stay in possession under the protection of the Act.

At first sight that appears to be a sound proposition. However, it overlooks a very important provi-

sion, namely section 4(1A) of the Railway Ordinance, 1948. That provides (*inter alia*) as follows:

"The written laws for the time being in force in the Federation or in any part thereof shall, except where otherwise expressly provided, apply to the Railway Administration in the same manner as they apply to the Government of the Federation...."

It follows from that provision that section 4(2)(b) of the Control of Rent Act, 1966, being one of the written laws for the time being in force, applies to the Railway Administration in the same manner as it applies to the Government of the Federation. That is to say, if the premises are the property of the Railway Administration they are exempted from the protection of the Act as if they had been the property of the Government of the Federation. Their Lordships respectfully agree with the conclusion of Gill C.J. in the Federal Court that section 4(1A) is a complete answer to this argument of the appellants. It is on its plain terms precisely applicable to the present circumstances. Their Lordships are unable to agree with Chang Min Tat J. and Ali F.J. who were of the view that the object of the provision was not to extend any written law applicable to Government property to the property of the Railway Administration.

They are however told, and indeed it appears in the judgment of Gill C.J., that the respondents are not in fact the registered owners of the premises as averred and admitted. It is only just in those circumstances to examine, as the High Court and the Federal Court did, whether the appellants fare any better upon the true facts than they do upon those which were averred and admitted. In their Lordships' opinion they do not.

There are, it seems, two possibilities. The first was that favoured by Chang Min Tat J. and Gill C.J. It was as follows. By virtue of section 15(1) of the Railway Ordinance, 1948, the premises on the commencement of the Ordinance vested in the Federal Lands Commissioner for the purposes of the Malayan Railway for the like title, estate, or interest and on the like tenure as the same were vested or held immediately before the commencement of the Ordinance. The premises being vested in the Federal Lands Commissioner were at all material times the property of the Government of the Federation of Malaya and accordingly exempted from the provisions of the Control of Rent Act.

Ali F.J., whilst also coming to the conclusion that the appellants must fail, reached that conclusion by a different route. As is correctly alleged in the statement of claim the premises are situated on land which was reserved for the railway. They are not alienable lands. They cannot be acquired or purchased. They are, as Mr. Rattee put it, "in limbo". They are lands reserved for railway purposes.

There is no doubt that railways are in the Federal Legislative list by virtue of the 9th Schedule to the Constitution, List I, item 10(b):

"Railways, excluding Penang Hill Railway."

Therefore this was land which was reserved for federal purposes.

Article 85(3) of the Constitution provides as follows:

"Except as provided by this Article, land in a State which is reserved for federal purposes shall not cease to be so reserved, and all land so reserved shall be controlled and managed by or on behalf of the Federal Government."

These premises are, then, controlled and managed by the respondents on behalf of the Federal Government. The fact that the land is not registered in the name of the Federal Government is neither here nor there.

Their Lordships are of the opinion, if it is necessary to decide between the two lines of approach, that this analysis of the situation by Ali F.J. is to be preferred. The premises whilst remaining the property of the Federal Government were under the day-to-day control of the respondents who were thus empowered to grant tenancies, serve notices to quit and so on. Being the property of the Federal Government the premises on this basis too were outside the Control of Rent Act.

Was the learned judge at fault in dealing with the application under Order 14 as a proceeding in lieu of demurrer under Order 25?

The complaint is that the judge acted *suo motu* under Order 25 when Order 25 rule 2 expressly requires either the consent of both parties or an application by one of the parties to enable action under the Order to be taken before trial.

Their Lordships are prepared to assume without deciding that the judge should have invited an application from the respondents before acting as he did. Nevertheless the effect of his decision was precisely the same as if he had acceded to the application under Order 14 and had entered judgment for the plaintiffs. The fact that he may possibly have adopted an erroneous method does not alter the fact that the result was correct in law, just and expeditious. This ground of appeal has no merit or substance.

Their Lordships will therefore advise His Majesty the Yang di-Pertuan Agong that the appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Turner Peacock; Stephenson Harwood.*

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATIONS v. CHAI YEN

[P.C. (Lord Edmund-Davies, Lord Fraser of Tulleybelton, Lord Russell of Killowen, Lord Keith of Kinkel & Lord Lane) October 29 & December 3, 1979]

[Privy Council Appeal No. 39 of 1978]

Practice and Procedure — Appeal — Time for appeal — Order made in Chambers — Whether time runs from date of the order or of the decision not to require further arguments — R.S.C. 1957, O. 54, r. 22A — Federal Court (Appeals) (Transitional) Rules, 1963, r. 13(a).

This was an appeal from the decision of the Federal Court, reported in [1978] 2 M.L.J. 245, which held that in the case of an order in chambers in which an application under Order 54, rule 22A had been lodged in time, the time for appeal ran from the date not of the order but of the decision not to require further arguments, and therefore